

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN ANDREWS,

Petitioner,

-v-

LUCIEN J. LECLAIRE, JR.,

Defendants.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: _____

07 CV 3393 (KMK)

ORDER ADOPTING REPORT AND
RECOMMENDATION

KENNETH M. KARAS, U.S.D.J.:

On February 8, 2010, Magistrate Judge Smith entered a Report & Recommendation ("R&R") recommending that this Court dismiss this action. (R&R (Dkt. No. 10) 19.) In the R&R, Magistrate Judge Smith provides notice that objections to her conclusions were due within seventeen working days, and that failure to object would constitute a waiver of Petitioner's right to appeal. (*Id.* at 19-20.) No objections have been filed.

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008); *Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at *1 (S.D.N.Y. Mar. 15, 2007). The Court has reviewed the R&R and finds no error, clear or otherwise. The Court therefore adopts the R&R in its entirety.

Petitioner argued that the jury charge given during jury selection was unbalanced due to a failure to include the law on identification or credibility. (Petition ¶ A) To the extent that Petitioner argues that there was a risk of tainted deliberation before the jury was given the case, the R&R addresses that point. (R&R 7-10.) To the extent that Petitioner argues that the jury's actual deliberations were tainted, the Court notes that any error was cured when the trial judge gave the relevant instructions before the jury deliberated. (Trial Tr. Vol. II, at 795-806, *People v. Andrews*, Ind. No. 387/03 (N.Y. Super. Ct. Aug. 27, 2003).)

Therefore, it is ORDERED that the Petition is DISMISSED. The Clerk of the Court is respectfully requested to terminate this case.

DATED: White Plains, New York
May 4, 2010


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE